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No. 03-674

In the Supreme Court of the United States

KEYSE G. JAMA, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION$ PRESENTED

Whether immigration officials may remove petitioner to his country of birth under 8 U.S.C. 1231(b)(2)(E)(iv), where that country lacks a functioning central government that is able either to accept petitioner's return or to withhold acceptance.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-12a) is reported at 329 F.3d 630. The memorandum opinion and order of the district court (Pet. App. 42a-55a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 27, 2003. A petition for rehearing was denied on August 6, 2003 (Pet. App. 56a). The petition for a writ of certiorari was filed on November 4, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Immigration and Nationality Act (INA), 8 U.S.C. 1231(b), specifies the countries to which aliens

who are subject to a final administrative order of removal may or must be removed under particular circumstances. Within that provision, Section 1231(b)(2) governs the removal of aliens who, rather than being stopped at the border and denied entry, achieved initial entry into the United States. Section 1231(b)(2)(A) and (B) of Title 8 allows such aliens to designate the country to which they want to be removed. Section 1231(b)(2)(C) provides that the Attorney General "may disregard" those designations if the government of the designated country does not timely inform the Attorney General of its acceptance of the alien, that government is not willing to accept the alien, or the Attorney General decides that removal to the designated country would be prejudicial the United States. 8 U.S.C. 1231(b)(2)(C).[1]

Section 1231(b)(2)(D) provides that an alien who is not removed to a country he designates "shall" be removed "to a country of which the alien is a subject, national, or citizen," unless the government of such country either fails to timely inform the Attorney General of its acceptance of the alien or is not willing to accept the alien. 8 U.S.C. 1231(b)(2)(D).

[1] On March 1, 2003, functions of several border and security agencies, including certain functions formerly performed within the Department of Justice by the Immigration and Naturalization Service, were transferred to the Department of Homeland Security. See Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 441(2), 451(b), 116 Stat. 2192, 2196 (to be codified at 6 U.S.C. 251(2), 271(b)). The Attorney General remains responsible for the administrative adjudication of removal cases by immigration judges and the Board of Immigration Appeals. See *Aliens and Nationality; Homeland Security; Reorganization of Regulations*, 68 Fed. Reg. 9830-9846 (2003) (to be codified at 8 C.F.R. Pts. 1001-1337) (Justice Department implementing regulations as recodified after Homeland Security Act).

Section 1231(b)(2)(E) sets out other countries to which "the Attorney General shall remove" an alien who is not removed to a country under Section 1231(b)(2)(A)-(D). 8 U.S.C. 1231(b)(2)(E). Clauses (i) through (vi) provide the following options, from which the Attorney General may select: (i) the country from which the alien was admitted to the United States; (ii) the country from which the alien left for the United States; (iii) a country in which the alien formerly resided; (iv) the country in which the alien was born; (v) the country that had sovereignty over the alien's birthplace when the alien was born; and (vi) the country in which the alien's birthplace is located. 8 U.S.C. 1231(b)(2)(E)(i)-(vi). Clause (vii) then provides that if it is "impracticable, inadvisable, or impossible to remove the alien to each country described in a previous clause," then the Attorney General must remove the alien to "another country whose government will accept the alien into that country." 8 U.S.C. 1231(b)(2)(E)(vii).[2]

2. Petitioner is a native and citizen of Somalia who was admitted to the United States in 1996 as a refugee. Pet. App. 43a. Since 1991, Somalia has lacked a functioning central government. *Id.* at 24a.

In 1999, petitioner was convicted of felony assault in Minnesota. Pet. App. 44a. Petitioner received a suspended sentence of one year and one day and was placed on probation for three years. *Ibid.* Petitioner later violated the conditions of his probation and was required to serve his sentence of imprisonment. *Ibid.*

While petitioner was serving his sentence, the Immigration and Naturalization Service (INS) commenced

[2] Section 1231(b)(2)(F) gives the Attorney General additional flexibility in executing removal orders during wartime. 8 U.S.C. 1231(b)(2)(F).

removal proceedings against him by charging that the assault conviction was a "crime of moral turpitude" under 8 U.S.C. 1182(a)(2)(A)(i)(I). Pet. App. 44a. In his removal proceeding before an immigration judge, petitioner conceded that he is a removable alien under the INA, but applied for asylum and other forms of protection from removal, arguing that he would be persecuted if returned to Somalia. See *id.* at 1a, 22a-23a. The immigration judge determined that petitioner is removable based on his assault conviction and denied petitioner's applications for protection from removal. *Id.* at 23a, 44a. Because petitioner declined to designate a country of removal and the immigration judge determined that petitioner is not eligible for relief from removal to Somalia, the immigration judge designated petitioner's home country of Somalia as the country of removal. *Id.* at 44a. The Board of Immigration Appeals (BIA) affirmed the order of removal. *Id.* at 1a-2a.[3]

3. In May 2001, the INS notified petitioner that it intended to execute his removal order. Pet. App. 2a, 44a. In June 2001, before his planned removal, petitioner filed a habeas corpus petition under 28 U.S.C. 2241 in the United States District Court for the District of Minnesota. Petitioner argued that the INS lacks authority to remove him to Somalia in the absence of a functioning Somali central government that is able to accept his return. Pet. App. 3a, 45a. Petitioner did not renew his contention that he would suffer persecution if

[3] The Attorney General and the Secretary of Homeland Security have designated Somalia as a country whose nationals in the United States may apply for Temporary Protected Status to avoid removal during the period of the designation. See 8 U.S.C. 1254a; 68 Fed. Reg. 43,147 (2003). Temporary Protected Status is not available to alien felons like petitioner, however. See 8 U.S.C. 1254a(c)(2)(B)(i).

returned to Somalia, nor did he purport to seek review of his order of removal. See *id.* at 13a-20a (reproducing habeas corpus petition).

Adopting the report and recommendation of a magistrate judge, see Pet. App. 21a-41a, the district court granted the habeas corpus petition and ordered the INS not to remove petitioner from the United States "until the government of the country to which he is to be removed has agreed to accept him and upon further order of this Court," *id.* at 55a. The district court first rejected the government's argument that its review of the habeas corpus petition was barred by 8 U.S.C. 1252(g), which denies courts "jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to * * * execute removal orders." 8 U.S.C. 1252(g). Citing *INS* v. *St. Cyr*, 533 U.S. 289 (2001), the court reasoned that "§ 1252(g) does not expressly mention habeas or § 2241 and it should not be understood to eliminate such review by implication." Pet. App. 46a. The court thus concluded that it had jurisdiction to consider whether immigration officials may remove petitioner to Somalia "without first obtaining some type of acceptance from a Somali governmental authority." *Id.* at 48a.

On that question, the district court agreed with the parties and the magistrate judge that, because petitioner did not designate a country of removal and Somalia has not accepted his return, petitioner's removal is governed by Section 1231(b)(2)(E), and specifically clause (iv) of that section, which authorizes removal to the alien's country of birth. Pet. App. 50a-51a. The court concluded that the requirement of acceptance by the country of removal that appears in 8 U.S.C. 1231(b)(2)(E)(vii) "was meant to apply to all

the clauses" of Section 1231(b)(2)(E), including clause (iv). Pet. App. 51a.

The district court determined (Pet. App. 51a-52a) that its reading of Section 1231(b)(2)(E) is consistent with case law discussing 8 U.S.C. 1253(a) (1994), which is the statutory predecessor of Section 1231(b)(2). The court gave no weight to the BIA's contrary construction of former Section 1253(a) in *In re Niesel*, 10 I. & N. Dec. 57, 58-59 (1962), stating that deference to administrative interpretations is unwarranted in this case because there is "no ambiguity" in the language of Section 1231(b)(2)(E). Pet. App. 53a.

4. a. The United States Court of Appeals for the Eighth Circuit reversed and remanded to the district court for the entry of an order denying the habeas corpus petition. Pet. App. 1a-12a. The court of appeals agreed with the district court that 8 U.S.C. 1252(g) does not bar judicial consideration of petitioner's habeas corpus petition (Pet. App. 3a-4a), but it concluded on the merits that the plain language of 8 U.S.C. 1231(b)(2)(E)(iv)—which permits removal to an alien's country of birth and does not contain an acceptance requirement—establishes that acceptance is not required for removal under that clause. Pet. App. 6a. The court explained that "as [a] matter of simple statutory syntax and geometry, the acceptance requirement [in Section 1231(b)(2)(E)] is confined to clause (vii), and does not apply to clauses (i) through (vi)." *Ibid.*

The court rejected petitioner's contention that its interpretation of Section 1231(b)(2)(E) "nullifies" the provision for acceptance as a condition of removal to the country of which the alien is a subject, national, or citizen, pursuant to Section 1231(b)(2)(D). Pet. App. 7a. The court explained that an alien born in the country to which he is to be removed under Section

1231(b)(2)(E)(iv) "is not always a subject, national or citizen" of that country, so Section 1231(b)(2)(D) may not apply to the alien at all. *Ibid.* The court also observed that "between countries, it is not uncommon behavior to attempt to accomplish a task by asking politely first"—*i.e.*, to attempt consensual removal under Section 1231(b)(2)(D)—"and then to act anyway if the request is refused." *Ibid.* The court concluded that its interpretation of Section 1231(b)(2) does not conflict with any "settled judicial construction" of former Section 1253(a), *ibid.*, and that a BIA decision cited by petitioner, *In re Linnas*, 19 I. & N. Dec. 302 (1985), did not overrule the earlier *Niesel* decision that rejected an acceptance requirement, see Pet. App. 7a-8a.

Judge Bye dissented. In his view, the district court's inference of an acceptance requirement under Section 1231(b)(2)(E)(iv) was consistent with a "well-settled construction given [8 U.S.C. 1253(a) (1994)] by the courts and the INS." Pet. App. 10a. Judge Bye further stated that allowing the removal of aliens to countries that lack a functioning central government is an "absurd result[]," *id.* at 11a, that violates his "sense of liberty and justice," *id.* at 12a.

b. On August 6, 2003, the court of appeals denied petitioner's request for rehearing and rehearing en banc. Pet. App. 56a. On August 13, 2003, the court of appeals issued its mandate. In an effort to prevent his removal to Somalia under his removal order and the court of appeals' decision, petitioner then asked the court of appeals to recall its mandate pending his filing of a petition for a writ of certiorari. On August 28, 2003, the court of appeals denied that motion. *Id.* at 57a. On November 4, 2003, petitioner filed the instant petition for a writ of certiorari. On November 10, 2003, the court of appeals granted petitioner's renewed mo-

tion to recall the mandate and stayed the issuance of its mandate until this Court "takes action on [petitioner's] petition for certiorari." App., *infra*, 1a.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court. Although a panel of the Ninth Circuit has disagreed with the Eighth Circuit's interpretation of 8 U.S.C. 1231(b)(2)(E), that conflicting decision is the subject of a pending petition for rehearing en banc in the Ninth Circuit. Moreover, if the Ninth Circuit denies rehearing en banc, that case may provide a better vehicle for this Court's review of the statutory removal issue, as well as additional issues in that case.

1. a. The court of appeals correctly concluded that the absence of a functioning central government in Somalia does not preclude petitioner's removal to Somalia under 8 U.S.C. 1231(b)(2)(E)(iv). Congress referred to "accept[ance]" as a condition on removal under *other* provisions of Section 1231(b)(2). See 8 U.S.C. 1231(b)(2)(D) and (E)(vii). But no such requirement appears in clauses (i) through (vi) of Section 1231(b)(2)(E). That omission is critical, for "[w]here Congress includes particular language in one section of [the Immigration and Naturalization Act] but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion." *INS* v. *Cardoza-Fonseca*, 480 U.S. 421. 432 (1987) (quoting *United States* v. *Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972)). As the Eighth Circuit put it, "[c]ourts are obligated to refrain from embellishing statutes by inserting language that Congress has opted to omit."

Pet. App. 6a (quoting *Root* v. *New Liberty Hosp. Dist.*, 209 F.3d 1068, 1070 (8th Cir. 2000)).

There is an acceptance requirement in Section 1231(b)(2)(E)(vii). But it does not apply here, because the Secretary of Homeland Security (through his designees) has determined that it is not "impracticable, inadvisable, or impossible," 8 U.S.C. 1231(b)(2)(E)(vii), to remove petitioner to Somalia (the country of his birth) pursuant to Section 1231(b)(2)(E)(iv). Indeed, the Office of the Solicitor General has been informed by the Department of Homeland Security that, since Fiscal Year 1997, the United States has removed approximately 200 aliens to Somalia.[4]

b. Petitioner argues (Pet. 11) that, in enacting current Section 1231(b)(2) as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, § 305(a)(3), 110 Stat. 3009-600, Congress ratified "a clear line" of judicial and administrative precedent that interpreted 8 U.S.C. 1253(a) (1994) as requiring acceptance of the alien by the country of removal in all cases. Petitioner is mistaken.

The court of appeals correctly concluded that "there exist[ed] no settled judicial construction" of former Section 1253(a) that required acceptance of the alien by the foreign government in all circumstances. Pet. App. 7a. Of particular significance here, none of the decisions

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[4] If petitioner's reading of Section 1231(b)(2)(E)(iv) were correct, then this case would present the further issue whether provisions for acceptance between governments are enforceable by an individual alien against the United States Government in light of 8 U.S.C. 1231(h), which provides: "Nothing in this section shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person."

cited by petitioner involved a country of removal that lacked a functioning central government. Only one of the court cases cited by petitioner (Pet. 9-10), *United States ex rel. Tom Man* v. *Murff*, 264 F.2d 926 (2d Cir. 1959), involved a situation in which an alien sought to prevent his removal to a country that had not indicated acceptance or rejection of the removal. The other passages on which petitioner relies are dicta, or otherwise unhelpful to petitioner. See *Amanullah* v. *Cobb*, 862 F.2d 362, 365-366 (1st Cir. 1988) (citing *Tom Man* in interpreting different provision of INA); *Lee Wei Fang* v. *Kennedy*, 317 F.2d 180 (D.C. Cir.) (upholding removal of mainland Chinese to Taiwan and Hong Kong, rather than Communist China), cert. denied, 375 U.S. 833 (1963); *Chi Sheng Liu* v. *Holton*, 297 F.2d 740, 743 (9th Cir. 1961) (noting *Tom Man* decision, but determining that country of removal had accepted alien); *Rogers* v. *Lu*, 262 F.2d 471 (D.C. Cir. 1958) (per curiam) (summarily affirming order barring deportation).

Petitioner's argument also is not supported by the administrative decisions he cites (Pet. 11). In *In re Linnas*, 19 I. & N. Dec. 302 (1985), the Board of Immigration Appeals accepted the Second Circuit law established in *Tom Man* for the purpose of deciding a case that arose in that circuit, without independently reaching the same conclusion as *Tom Man* or overruling its earlier rejection of an acceptance requirement in *In re Niesel*, 10 I. & N. Dec. 57, 59 (1962). See *Linnas*, 19 I. & N. Dec. at 306-307. In *In re Anunciacion*, 12 I. & N. Dec. 815 (1968), the BIA did not mention (much less purport to overrule) *Niesel*, and appears only to have acknowledged the practical difficulty that the United States would face in deporting an alien to the Philippines if the government of that country refused to accept her. *Id.* at 818.

In short, decisions arising under now-repealed provisions of the INA furnish no basis for certiorari in this case arising under 8 U.S.C. 1231(b)(2).[5]

c. Petitioner asserts (Pet. 13-15) that the Eighth Circuit's interpretation of 8 U.S.C. 1231(b)(2)(E) is incorrect, because it may allow the government to remove an alien under clauses (i) through (vi) when the alien could not be removed to the same country under 8 U.S.C. 1231(b)(2)(D) in light of the provision for acceptance as a condition on removal under the authority of that section. As the court of appeals explained (Pet. App. 7a), however, there is nothing "anomalous" (Pet. 15) about a statutory framework under which immigration officials first seek acceptance from the country of removal pursuant to Section 1231(b)(2)(D) if that section applies, but nevertheless have authority under Section 1231(b)(2)(E) to effectuate the removal of the alien to that country if it is "[]practicable, []advisable, [and] []possible," 8 U.S.C. 1231(b)(2)(E)(vii), even though acceptance has not been forthcoming. By contrast, it *would* be truly "anomalous" if Section

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[5] In February 2003, the Office of Legal Counsel (OLC) of the Department of Justice rendered an opinion addressing the timing of removal actions under 8 U.S.C. 1231(a), in which OLC indicated that removal under Section 1231(b)(2)(E)(i)-(vi) ordinarily entails acceptance by the existing government of the country of removal. See Memorandum Opinion for the Deputy Attorney General: Limitations on the Detention Authority of the Immigration and Naturalization Service 27 n.11 (OLC Feb. 20, 2003), available at <http://www.usdoj.gov/olc/INSDetention.htm>. Section 1231(b)(2) was not the subject of OLC's advice. Furthermore, the opinion on its face does not consider the situation in this case, where the country of removal lacks a functioning government and acceptance therefore would be a practical impossibility. We are advised that the alien who was the subject of OLC's opinion had no connection to Somalia.

1231(b)(2) imposed an inflexible acceptance requirement as petitioners suggests. Under that rule, the United States could be barred from expelling an alien from its own territory merely because the alien's own country happened to be without a functioning central government, and foreign governments could prevent the United States from repatriating their nationals merely by failing to indicate acceptance of the repatriation, even when the United States has determined that the removal is possible and advisable.

The permissive language of Section 1231(b)(2)(C)—which provides that the Attorney General "may" (not "must") disregard the alien's designation in the absence of acceptance—allows the Attorney General, in his discretion, to remove an alien to a country the alien has designated, even if that country is not willing to accept the alien. See 8 U.S.C. 1231(b)(2)(C). Thus, Section 1231(b)(2) plainly does not establish an absolute statutory requirement of respecting foreign governments' wishes concerning removal. Furthermore, although Section 1231(b)(2)(D) provides that the Attorney General "shall" remove the alien to his country of citizenship or nationality "unless" the government of that country does not respond in a timely manner or is not willing to accept the alien, it does not further provide that the Attorney General shall not remove the alien to that country if its government does not give its consent. Thus, removal to that country remains permissible where, as here, that country falls within clauses (i) through (vi) of Section 1231(b)(2)(E), which contain no condition of acceptance.

Nevertheless, as Judge Bye noted in dissent (Pet. App. 11a), the United States typically will not attempt to remove an alien to a country whose government is unwilling to receive the alien. The legal question

framed in the instant petition therefore is not likely to determine whether an alien will be removed, *except* in those instances in which the country of removal lacks a functioning government that could give its consent. It is particularly unlikely that Congress intended to disable immigration officials from executing a final order of removal in that unusual situation, because proceeding with the removal would not implicate the sovereign authority of any other government.

Finally, there is no force to petitioner's invocation (Pet. 17-18) of supposed "human rights abuses" if he is removed to Somalia. Petitioner claimed in the immigration court that he would be subject to persecution if returned to Somalia, but the immigration judge, affirmed by the BIA, determined that petitioner does not qualify for protection from removal under the asylum provisions of the INA or other provisions of the immigration laws. See p. 4, *supra*. Petitioner did not seek direct judicial review of the BIA's decision or challenge it in his habeas corpus petition. And petitioner does not make any showing that the rejection of his applications for protection from removal was incorrect.

2. As petitioner observes (Pet. 9), in the one other court of appeals decision arising under the current provision of the INA, the Ninth Circuit recently concluded that acceptance by the country of removal is "implicitly required for all removals" under 8 U.S.C. 1231(b)(2)(E). *Ali* v. *Ashcroft*, 346 F.3d 873, 881 (9th Cir. 2003), petition for reh'g pending, No. 03-35096 (9th Cir.). On December 12, 2003, however, the government filed a petition for rehearing en banc in *Ali*, in which it sought further review of that issue. If the Ninth Circuit grants the government's petition and vacates the panel's decision, then the circuit conflict on which petitioner relies will cease to exist.

Even if the Ninth Circuit denies the government's rehearing petition in *Ali*, the instant case may not be the best vehicle for addressing the circuit conflict. Whereas this case involves the removal of a single alien, *Ali* affirmed a permanent injunction against the removal of a nationwide class consisting of:

> All persons in the United States who are subject to orders of removal, expedited removal, deportation or exclusion to Somalia that are either final or that [the government] believe[s] to be final, excluding any person with a habeas petition pending, or an appeal, raising the issue of unlawful removal to Somalia under 8 U.S.C. § 1231(b).

Ali v. *Ashcroft*, 213 F.R.D. 390, 396 (W.D. Wash. 2003); see 346 F.3d at 876, 886-891. The Ninth Circuit's approval of nationwide class relief prevents the removal of thousands of Somalis who are under a final order of removal or otherwise lack permission to be in the United States, and raises important issues in addition to the issue under Section 1231(b)(2) that is presented in the instant petition.[6]

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[6] By its terms, the injunction in *Ali* does not extend to removable aliens who filed habeas corpus petitions before its imposition. Those non-class members include petitioner, the aliens in another Eighth Circuit case involving removal to Somalia under 8 U.S.C. 1231(b)(2)(E), see *Omar* v. *INS*, No. 03-2653 (docketed June 26, 2003), and the seven habeas corpus petitioners in *Mohamed* v. *INS*, No. 02-2484 (W.D. La. June 27, 2003), appeal pending, No. 03-30675 (5th Cir. briefing completed Dec. 4, 2003). In *Mohamed*, the district court concluded, consistent with the Eighth Circuit's determination in this case, that under "the plain language of § 1231(b)(2)(E)" acceptance by Somalia is not a necessary precondition to removal. 6/27/03 Ruling at 15, *Mohamed* v. *INS*, *supra* (No. 02-2484).

The legal issues surrounding the class certification in *Ali* include whether the Attorney General and the Secretary of Homeland Security are proper respondents in habeas corpus actions concerning enforcement of the immigration laws—a question that the Ninth Circuit has decided in conflict with several other courts of appeals and that must be answered in the affirmative for a nationwide habeas corpus class action even to be potentially viable in the immigration area. Compare *Ali*, 346 F.3d at 887-888 (Attorney General is proper habeas respondent), and *Armentero* v. *INS*, 340 F.3d 1058, 1061 (9th Cir. 2003) (Attorney General and Secretary of Homeland Security are proper habeas respondents in "circumstances specific to the situation of immigration detainees"), petition for reh'g en banc pending, No. 02-55368 (9th Cir.), with *Roman* v. *Ashcroft*, 340 F.3d 314, 318-327 (6th Cir. 2003) (Attorney General not alien's immediate custodian and therefore not proper habeas respondent), petition for reh'g en banc pending, No. 02-3253 (6th Cir.); *Vasquez* v. *Reno*, 233 F.3d 688 (1st Cir. 2000) (same), cert. denied, 534 U.S. 816 (2001); and *Yi* v. *Maugans*, 24 F.3d 500, 507 (3d Cir. 1994) (stating, in refusing to certify nationwide habeas class of Chinese aliens, that immediate-custodian rule applies in immigration context). Accordingly, even if the government's pending petition for rehearing in *Ali* were denied, the removal issue in this case might be better considered (if at all) in *Ali*, which squarely presents that issue as well as additional issues of general importance on which the courts of appeals are divided.[7]

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[7] Although the government's position is that the INS was not a proper respondent to the habeas corpus petition in this case, the habeas petition nevertheless was filed in the judicial district where petitioner is held in immigration custody and where the former

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 2004

INS District Director (see note 1, *supra*) was located, and the issue was not litigated below. In *Ali*, as in this case, the court of appeals rejected the government's argument that it lacked jurisdiction under 8 U.S.C. 1252(g). See 346 F.3d at 878-880.

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 2-2324MNST

KEYSE G. JAMA, APPELLEE

v.

IMMIGRATION AND NATURALIZATION SERVICE, APPELLANT

Nov. 10, 2003

Appeal From The United States District Court of The District of Minnesota

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The motion to recall the mandate is granted and the mandate is stayed until the Supreme Court of the United States takes action on Mr. Jama's petition for certiorari. (5362-010199)

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit